

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

BENNY LYNN ISOM,)	
)	
Petitioner,)	1:19CV90
)	1:19CV783
v.)	1:03CR242-1
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

This matter is before this court for review of the Amended Recommendation filed on June 20, 2019, by the Magistrate Judge in accordance with 28 U.S.C. § 636(b). (Doc. 165.) In the Amended Recommendation, the Magistrate Judge recommends that Petitioner's motion for relief under the First Step Act, (Doc. 153), be denied and that this action be dismissed without prejudice to Petitioner promptly filing a corrected motion on the proper § 2255 forms if he seeks to attack his sentence under that statute and receives permission to do so. The Amended Recommendation was served on the parties to this action on June 20, 2019. (Doc. 166.) Petitioner timely filed objections to the Recommendation. (Doc. 167.)

Also before the court for review is the Recommendation filed on August 8, 2019, by the Magistrate Judge in accordance with 28 U.S.C. § 636(b). (Doc. 169.) In the Recommendation, the

Magistrate Judge recommends that this action be dismissed for failure to obtain certification for this § 2255 application by filing a Motion for authorization in the court of appeals as required by 28 U.S.C. §§ 2255 and 2244 and Fourth Circuit Local Rule 22(d). The Recommendation was served on the parties to this action on August 8, 2019. (Doc. 170.) Petitioner filed "Exhibit A," (Doc. 171), as an additional attachment to his § 2255 which the court will allow, but it does not change the substance of the Magistrate Judge's Recommendation. On September 9, 2019, Petitioner filed a premature "notice of appeal" which the court will treat as objections to the Recommendation. (Doc. 172.) Petitioner's appeal was dismissed by the Fourth Circuit for lack of jurisdiction (19-7298). (Docs. 176, 177.)

This court is required to "make a de novo determination of those portions of the [Magistrate Judge's] report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). This court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the [M]agistrate [J]udge. . . . [O]r recommit the matter to the [M]agistrate [J]udge with instructions." Id.

This court has appropriately reviewed the portions of the Amended Recommendation, (Doc. 165), and Recommendation, (Doc. 169), to which objections were made and has made a de novo

determination which is in accord with the Magistrate Judge's Recommendations. This court therefore adopts the Recommendations.

IT IS THEREFORE ORDERED that the Magistrate Judge's Recommendations, (Docs. 165, 169), are **ADOPTED. IT IS FURTHER ORDERED** that Petitioner's motion for relief under the First Step Act, (Doc. 153), is **DENIED** and that this action be dismissed without prejudice to Petitioner promptly filing a corrected motion on the proper § 2255 forms if he seeks to attack his sentence under that statute and receives permission to do so.

IT IS FURTHER ORDERED that Petitioner's Motion to Vacate, Set Aside, or Correct Sentence, (Doc. 168), is dismissed without prejudice for Petitioner's failure to obtain certification for this § 2255 application by filing a Motion for Authorization in the Court of Appeals as required by 28 U.S.C. §§ 2255 and 2244 and Fourth Circuit Local Rule 22(d).

A Judgment dismissing these actions will be entered contemporaneously with this Order. Finding no substantial issue for appeal concerning the denial of a constitutional right affecting the conviction, nor a debatable procedural ruling, a certificate of appealability is not issued.

This the 7th day of January, 2020.

William L. Ostun, Jr.
United States District Judge